IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 14.12.2007

Coram

THE HONOURABLE MR.JUSTICE ELIPE DHARMA RAO
AND
THE HONOURABLE MS. JUSTICE K.SUGUNA

W.P. No.26939 of 2003
and
W.P.M.P.No.32906 of 2003

M.Gowri Ammal Petitioner

vs.

1. The Joint Secretary,
   Tamil Nadu Public Service Commission,
   Chennai-2.

2. The Director of Adi-Dravidar and
   Tribal Welfare, Chepauk, Chennai-5.

3. The Registrar,
   Tamil Nadu Administrative Tribunal,
   City Civil Court Complex,
   Chennai 600 104. Respondents

Writ Petition praying for issuance of a writ of certiorarified mandamus calling for records pertaining to

(1) the order of Honourable Tamil Nadu Administrative Tribunal dated 5.8.2003 in O.A.No.701 of 1991 and

(2) Memo No.2443/H7/89 dated 24.1.1992 of the Joint Secretary, Tamil Nadu Public Service Commission, the first respondent herein and quash both the orders and consequently to direct the respondents to allow the petitioner to continue to work as Typist in the Adi Dravidar and Tribal Welfare Department with all attendant monetary benefits.

For petitioner : Mr.R.Thiagarajan, Senior Counsel for
M/s. K.V. Srinivasaragavan

For R1 : Mr.A.Arul
For R2 : Mrs.Geetha Thamaraiselvan, G.A.

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ORDER

(Order of the court was made by ELIPE DHARMA RAO, J.)

The petitioner is aggrieved of the order passed by the Tribunal dismissing the application filed by the petitioner against the order of cancellation of her provisional selection and deletion of her name from the approved list of Typist in the Tamil Nadu Ministerial Service on 24.1.1992.

2. The petitioner's application was cancelled for recruitment to the post of Typist/Steno-Typist included in Group IV services 1989 as in column 5(a) of her application it was mentioned that she studied B.A. III year of Open University, Madras and that on the date of her application, she did not pass B.A. Degree examination in full. But, her application was admitted provisionally considering that the II year Foundation Course examination passed by her is equivalent to the PUC examination of the Madras University. But, when it was sought for clarification from the Registrar of Madras University as to whether passing of first and second year Foundation Course of B.A. Degree examination of Madras University in correspondence course after passing the II year course of SSLC can be considered as equivalent to PUC Examination, it was replied by the Madras University that a pass in the First and Second Year Foundation Courses of B.A. Degree examination of the Madras University cannot be considered as equivalent to a pass in the Pre-University Course Examination. Therefore, considering that she was not having the qualification viz., P.U.C or H.S.C., a qualification higher than the minimum general educational qualification and therefore, exceeded the age limit of 30 years as on 1.7.1989 prescribed for the post. Therefore, her provisional selection as Typist in the Unit of Director of Adi-Dravidar and Tribal Welfare, Madras was cancelled and her name as been deleted from the approved list of Typist in the Tamil Nadu Ministerial Service.

3. Aggrieved of the above, the Original Application was filed contending as follows:- The petitioner belongs to the Backward Class. The petitioner passed her SSLC Examination in the year 1974 with 59%. Subsequently, she joined the Correspondence Course of Madras University for obtaining B.A. Degree. She wrote the TNPSC Group IV Examination for the post of Typist in Tamil Nadu Ministerial Service on 29.12.1989. Thereafter, it was intimated by the Tamilnadu Public Service Commission (the Commission in short) to the petitioner through proceedings dated 28.4.1990 that her name was provisionally selected for the post of Typist in the Department

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of Adi Dravidar and Tribal Welfare. Thereafter, appointment order was issued on 22.5.1990 as Typist temporarily in the Adi Dravidar and Tribal Welfare Department in the timescale pay of Rs.950-1660 and she was posted as Typist in the Government Adi Dravidar Welfare High School, Elathoor, Arakkonam Taluk. Thereafter, by memo dated 22.8.1990, the Under Secretary to the Commission directed the petitioner to send her original mark sheets to prove that she passed her second year Foundation Course in B.A. Degree on or before 15.9.1990 failing which her selection for the post of Typist will be cancelled without further notice. A reply was given by the petitioner through letter dated 6.9.1990 with the original certificates in respect of three year B.A. Degree course. Thereafter, her services were regularised vide proceedings dated 31.12.1991 from 25.5.1990 as Typist. But, the petitioner was informed that she has to undergo probation for a period of two years within a continuous period of three years and her seniority will be fixed by separate orders. Whileso, the petitioner received a communication on 24.1.1992 from the Commission stating that her provisional selection as Typist in the unit of Director of Adi Dravidar and Tribal Welfare is cancelled and her name is deleted from the approved list of Typists in the Tamil Nadu Ministerial Service on the ground that passing the Second Year B.A. Degree course from Madras University Foundation Course is not equivalent to PUC or HSC as stated by the Registrar of University and thus she did not possess the higher qualification than the minimum qualification and thereby exceeded the age limit prescribed for backward class.

4. It was contended before the Tribunal that the order is arbitrary, violation of Articles 14 and 21 of the Constitution of India. It was further contended that at the time of submission of application to the Commission in the year 1989, the petitioner had completed the three year B.A. Degree in Correspondence Course in Madras University and the above facts were mentioned in the application through her letter dated 6.9.1990 and on the basis of the above, she was allowed to write the examination and thereafter, she was provisionally selected and intimated on 22.5.1990, and she joined duty as Typist. Therefore, when she has got the B.A. Degree, the required educational qualification, she is entitled to the benefits under rule 12(d) of the General Rules for the Tamil Nadu State and Subordinate Services, viz., 2 years relaxation in age limit prescribed for the persons belonging to backward class. As on the date of submission of her application to the above post, she crossed 30 years and therefore, she is entitled to relaxation for two years.

5. The Tribunal held that there is exemption of age limit for the persons belonging to backward class provided they have higher qualification than the minimum qualification prescribed for the

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post. The minimum educational qualification is SSLC. The applicant had passed SSLC and completed 30 years as on 1.7.1989. Therefore, she ought to have acquired the educational qualification higher than the minimum qualification to claim the relaxation of the age limit. But, she acquired B.A. Degree examination in the year 1990. Therefore, on the date of notification, viz., 1.7.1989, she had studied second year B.A and therefore, pass in second year B.A is not higher qualification than the minimum required qualification of SSLC. Therefore, the Tribunal held that cancellation of provisional selection of the petitioner and deletion of her name from the approved list is perfectly in order. Against which the present writ petition is filed.

6. Heard the learned Senior Counsel for the petitioner and the counsel appearing for the respondents.

7. It is submitted by the learned Senior Counsel for the petitioner that when once the Commission has accepted the application of the petitioner even though it was mentioned in the application in column 5(a) that she passed second year B.A. Degree examination from Madras University under Correspondence Course, allowed her to sit for the examination, included her name in the provisional selection list, appointed as Typist and thereafter regularised her services with a condition to complete the probation within a period of two years within three years, terminating her services on the ground that by mistake, they considered the pass in second year B.A. Degree is equivalent to PUC and when they got clarification from the Registrar, Madras University that passing second year is not equivalent to PUC or HSC, is contrary to law. Therefore, the Tribunal has committed illegality in dismissing the Original Application.

8. The learned Senior Counsel further contended that as on 24.1.1991, the petitioner had acquired the higher qualification whereas she joined the service in 1990, but, as per Provisional Certificate dated 22.10.1990, she passed B.A. Degree course held in May 1990 and hence, the benefit provided under Rule 12(d) of the General Rules for the Tamil Nadu State and Subordinate Services is available for the petitioner to claim the two years age relaxation she being a candidate belonging to backward class. Therefore, the order passed by the Tribunal is liable to be dismissed.

9. The respondent filed their counter affidavit stating that the petitioner submitted her application to the Commission on 17.4.1989 for admission to the competitive examination for recruitment to the post of Typist included in Group IV services pursuant to the Commission's notification dated 7.3.1989. It was mentioned in the application that she has passed SSLC and studied B.A. Degree third year under Open University System in Madras

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University and she also possesses technical qualification of Typewriting and also belongs to backward class. It is further contended in the counter that the petitioner exceeded the minimum age limit of 30 years on 1.7.1989. According to Rule 12(d) of the General Rules for the Tamil Nadu State and Subordinate Services for the Tamil Nadu State and Subordinate Services, the age limit prescribed shall not be applicable to candidates belonging to backward class who have acquired a qualification higher than the minimum general educational qualification.

10. On consideration of the above facts and circumstances of the case, the contention of the respondents is that the petitioner has misrepresented her educational qualification as on the date of submission of application on 17.4.1989. On the other hand, taking into consideration the passing of the second year B.A. Degree through Correspondence Course as equivalent to PUC she was permitted to sit for written examination. Her name was also included in the provisional list and thereafter she was appointed. Subsequently her services were regularised with a condition that she has to complete two years probation within three years. In the meanwhile, on the reply from the Registrar, Madras University for a query that passing second year B.A. Degree is not equivalent to PUC and on the ground that she crossed 30 years on the date of application, the Commission came to the conclusion that the petitioner is over-aged on the date of making application and the benefit of relaxation of age limit is not applicable to the case of the petitioner. Therefore, the impugned order came to be passed.

11. We are of the view that the respondents have not properly considered rule 12(d) before passing the impugned order. As stated earlier, in 12(2)(d), relaxation of age limit to the backward class is provided if they acquire more qualification than the minimum required qualification for the post of Typist. Though the petitioner has stated in her application that she appeared for the third year examination through Correspondence Course from Madras University, as on the date of cancellation of her provisional selection, she had acquired the B.A. Degree and she was appointed with a condition to undergo probation for two years within a period of three years. Thereafter, her services were regularised Therefore, she is entitled to two years relaxation from the prescribed age limit of 30 years.

12. Therefore, we hold that the respondents have not properly applied rule 12(d) proviso 2 to the facts and circumstances of the case and passed the impugned order which is liable to be set aside. Accordingly, it is set aside. The writ petition is allowed. In the facts and circumstances of the case, no costs. In view of the

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setting aside of the order of cancellation of appointment of the petitioner, she is deemed to have continued her services from the date of cancellation and entitled to all benefits. The connected Miscellaneous Petition is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssk.

To

1. The Joint Secretary,
   Tamil Nadu Public Service Commission,
   Chennai-2.

2. The Director of Adi-Dravidar and
   Tribal Welfare, Chepauk,
   Chennai-5.

3. The Registrar,
   Tamil Nadu Administrative Tribunal,
   City Civil Court Complex,
   Chennai 600 104.

1 cc to the Government Pleader, Sr. 74550
1 cc to Mr.A. Arul, Advocate, SR. 74456
1 cc to Mr.K.V. Srinivasaraghavan, Advocate, Sr. 74124

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